



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application made March 14, 2019 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that the Tenants were served with the application for dispute resolution, notice of hearing and initial evidence (the “Materials”) by registered mail on March 14, 2019 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on March 19, 2019. I also accept the Landlord’s evidence that the Tenants were served with the additional and remaining evidence in person on March 18, 2019. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started on June 1, 2018. Although not set out in the tenancy agreement the Landlord states that rent of \$1,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. On February 23, 2019 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Notice is dated February 23, 2019 and sets out unpaid rent of \$1,400.00 due February 1, 2019. The Tenant paid this amount on February 26, 2019. On March 19, 2019 the Landlord served the Tenant in person with another 10 day notice to end tenancy for unpaid rent (the "March Notice"). The Landlord claims unpaid rent for January, February and April 2019. The Landlord states that obtaining the outstanding rent is not as important as obtaining an order of possession.

Analysis

Section 46(4)(a) of the Act provides that within 5 days after receiving a notice to end tenancy for unpaid rent, the tenant may pay the overdue rent, in which case the notice has no effect. Based on the Landlord's evidence that the Tenants were served with the Notice on February 23, 2019 and that the Tenant paid the rent set out on the Notice on February 26, 2019 I find that the Notice no longer has any effect. I dismiss the claim for an order of possession on the basis of the Notice.

Section 55(2)(b) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. As the Landlord made its application prior to serving the March Notice I find

that the Landlord made its application too early and I dismiss the claim for an order of possession on the basis of the March Notice with leave to reapply.

As the Landlord has received February 2019 rent I dismiss this claim. In order to preserve the Landlord's right to obtain an order of possession in relation to other unpaid rents I dismiss the claims for additional unpaid rent with leave to reapply. As the tenancy has not ended I dismiss the claim for retention of the security deposit with leave to reapply.

As none of the Landlord's claims have been successful I decline to award recovery of the filing fee and I dismiss this claim.

Conclusion

The Landlord's claims for an order of possession based on the Notice, February 2019 rent and the filing fee are dismissed. The remaining claims are dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 16, 2019

Residential Tenancy Branch